

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

### **FACTUAL HISTORY**

This case has previously been before the Board with respect to the issue of employment-related disability commencing July 20, 2007.<sup>2</sup> The facts of the case as presented in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On October 20, 2006 appellant, then a 52-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that she injured her lower back while lifting luggage while in the performance of duty on October 13, 2006.

OWCP initially denied the claim by decision dated December 14, 2006. Appellant requested a hearing and, by decision dated August 14, 2007, an OWCP hearing representative vacated the December 14, 2006 decision. She directed OWCP to accept the claim for lumbar strain, resolved.

Appellant subsequently filed a claim for wage-loss compensation (Form CA-7) from July 20 to September 1, 2007. By decision dated October 19, 2007, OWCP denied the claim for compensation commencing July 20, 2007. It found that the medical evidence of record was insufficient to establish the claimed period of disability.

On November 8, 2007 appellant authorized counsel to represent her before OWCP. Counsel requested a hearing before an OWCP hearing representative. By decision dated May 5, 2008, the hearing representative affirmed the October 19, 2007 decision. She found that the medical evidence of record did not establish an employment-related disability.

On June 2, 2008 appellant, through counsel, filed a timely appeal before the Board. By decision dated January 8, 2009, the Board set aside the May 5, 2008 decision and remanded the case, finding that OWCP had not adequately addressed the issues. Appellant had returned to a light-duty job and, as of July 19, 2007, the employing establishment had indicated that light-duty work was not available for appellant.<sup>3</sup>

In a March 18, 2009 decision, OWCP expanded acceptance of the claim to include aggravation of spondylolisthesis and aggravation of lumbar degeneration. It determined that wage-loss compensation would be paid for the period July 20 to September 1, 2007.

On August 25, 2010 counsel submitted a fee petition in the amount of \$4,720.83 for services provided from October 22, 2007 to July 29, 2009. He billed for 17.16 hours at a rate of \$275.00 per hour. The fee petition listed the services provided and the amount of time spent on each activity. Many of the itemized services were for reviewing e-mails or letters, with the time reported as 15 or 20 minutes.

OWCP sent appellant a November 3, 2010 letter, noting that counsel had submitted a request for authorization of \$4,720.83 in attorney fees. Appellant was provided an opportunity

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<sup>2</sup> Docket No. 08-1713 (issued January 8, 2009).

<sup>3</sup> *Id.*

to review the fee request, and if she did not respond within 30 days, it would be assumed she did not wish to comment. OWCP indicated that it then would approve a fee which it determined to be fair and reasonable.

In a letter dated November 20, 2010, appellant asserted that she was opposed to the attorney fee request as counsel did not have expertise or ability and did nothing to further her claim. She noted that OWCP's claims examiner had asked why appellant was doing all the work on her own claim, and she replied that was why she no longer had counsel.<sup>4</sup>

By letter dated June 15, 2015, counsel indicated that the 2010 fee request had never been adjudicated. He requested a decision on the matter.

By decision dated August 13, 2015, OWCP approved the fee petition in the amount of \$4,720.83. It indicated that appellant had made only general allegations regarding counsel's services, and had failed to provide evidence that he had not performed the itemized services.

On August 28, 2015 appellant requested a hearing before an OWCP hearing representative. On December 29, 2015 she submitted a copy of a retainer agreement signed October 26, 2007, and copies of letters sent to counsel regarding her case. The evidence includes letters that counsel, sent to appellant, with respect to requests for a hearing and a letter from counsel to a physician. In a letter to appellant dated June 30, 2009, counsel noted that the claim had been successfully completed based on the Board's decision.

A hearing was held on April 7, 2016 before an OWCP hearing representative. At the hearing appellant claimed that the amount of time counsel spent reading and writing letters was excessive. She also argued that OWCP had not made a timely decision regarding her claim.

By decision dated June 1, 2016, the hearing representative affirmed the August 13, 2015 OWCP decision. She indicated that the case record supported that counsel performed the itemized services and there was no evidence of record that approval of the fee petition was improper.

On June 17, 2016 appellant requested reconsideration. She asserted that OWCP had not accepted aggravations of spondylolisthesis and lumbar degenerative disc disease until 2011. Appellant submitted a February 25, 2008 letter she had written to counsel and wrote that counsel billed 15 minutes to read it, which she alleged was too long.

By decision dated August 3, 2016, OWCP reviewed the merits of appellant's claim and denied modification of the attorney fee determination. It found that the evidence of record was insufficient to modify the decision to approve the fee petition.

### **LEGAL PRECEDENT**

It is not the Board's function to determine the fee for representative services performed before OWCP. That is a function within the discretion of OWCP based on the criteria set forth

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<sup>4</sup> Appellant continued to pursue her claim for compensation without a representative.

in Title 20 of the Code of Federal Regulations and mandated by Board decisions. The Board's sole function is to determine whether the action by OWCP constituted an abuse of discretion.<sup>5</sup> Generally, an abuse of discretion is shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts.<sup>6</sup>

Section 10.703 of the Code of Federal Regulations provides in pertinent part that a representative must submit a fee application, which includes an itemized statement showing the hourly rate, number of hours worked, and the work performed.<sup>7</sup> When a fee application has been disputed, OWCP is required to provide the claimant with a copy of the fee application and request the submission of further information in support of any objection.<sup>8</sup> After the claimant has been afforded 15 days from the date the request was forwarded to respond to the request, OWCP will then proceed to review the fee application to determine whether the amount of the fee is substantially in excess of the value of services received by looking at the following factors: (1) usefulness of the representative's services; (2) the nature and complexity of the claim; (3) the actual time spent on development and presentation of the claim; and (4) customary local charges for services for a representative of similar background and experience.<sup>9</sup>

### ANALYSIS

Counsel submitted a fee petition on August 25, 2010 for services rendered from October 22, 2007 to July 29, 2009. Appellant has disputed the amount of the requested fee of \$4,720.83, contending that counsel spent too much time on such activities such as reviewing e-mails and letters. She further contends that she provided information to counsel and counsel did little to further her claim.

As discussed above, the Board does not determine the fee for representative services before OWCP. The Board reviews the issue to determine whether there was an abuse of discretion by OWCP. In this case OWCP approved the requested fee of \$4,720.83, noting that appellant had provided general allegations that she felt the fee was excessive based on the work performed. Having reviewed the evidence, the Board does not find an abuse of discretion by OWCP.

OWCP reviewed the four factors under 20 C.F.R. § 10.703(c). As to usefulness of services, the Board notes that, on November 8, 2007, appellant authorized counsel to represent her before OWCP. Counsel requested a hearing before an OWCP hearing representative on May 5, 2008. The hearing representative affirmed the October 19, 2007 decision, which denied

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<sup>5</sup> *L.H.*, Docket No. 11-900 (issued December 6, 2011); *C.H.*, Docket No. 10-987 (issued March 22, 2011); *Eric B. Petersen*, 57 ECAB 680 (2006); *Sharon Edwards*, 56 ECAB 749 (2005).

<sup>6</sup> *Claudio Vazquez*, 52 ECAB 496 (2001).

<sup>7</sup> 20 C.F.R. § 10.703(a)(1).

<sup>8</sup> *Id.* at § 10.703(c).

<sup>9</sup> *Id.*

appellant's claimed period of disability. Thereafter, on June 2, 2008, counsel appealed to the Board. The Board remanded the case in a January 8, 2009 decision. The Board found OWCP had not adequately addressed the issues, noting that appellant had returned to a light-duty job and as of July 19, 2007 the employing establishment had indicated that light-duty work was not available for appellant. Following the Board's remand, on March 18, 2009, OWCP expanded acceptance of the claim to include aggravation of spondylolisthesis, and aggravation of lumbar degeneration. It related that wage-loss compensation would be paid for the period July 20 to September 1, 2007.

As to the nature and complexity of the case, the issues involved included medical evidence as well as withdrawal of light duty. Appellant alleged that the actual time spent on the claim was excessive. She did not provide evidence to establish that counsel failed to perform the itemized services. The time spent on some services was limited to a quarter of an hour. OWCP found the time spent on activities such as reviewing letters was not unreasonable, and the Board finds no abuse of discretion in this regard. The hourly fee was \$275.00, which OWCP found was customary and no contrary evidence was presented. The Board thus finds no abuse of discretion in this regard.

Appellant raised the issue of the timeliness of OWCP's decision. It was counsel that timely submitted a fee application for the services performed. The delay in issuing a decision does not relieve OWCP of the obligation to properly render a decision on the fee application.<sup>10</sup>

The Board has frequently stated that it will not interfere with or set aside a determination by OWCP of a fee for legal services unless the determination is clearly in error.<sup>11</sup> OWCP has the discretion to approve attorney fees, and in this case, the Board finds no abuse of discretion.<sup>12</sup>

### **CONCLUSION**

The Board finds that OWCP did not abuse its discretion in approving attorney fees of \$4,720.83.

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<sup>10</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Representatives' Services*, Chapter 2.1200.6(f) (June 2012) (when a claimant disagrees with the amount of the fee, OWCP will issue a final decision that approves, modifies, or denies the fee.

<sup>11</sup> *William Arthur Burney*, 29 ECAB 253 (1978).

<sup>12</sup> See *R.H.*, Docket No. 14-0429 (issued July 28, 2014).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 3, 2016 is affirmed.

Issued: June 27, 2017  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board